IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 28TH SEPTEMBER 2006 / 6TH ASWINA 1928

Crl.Rev.Pet.No. 527 of 1998()

CRRP.41/1996 of SESSIONS COURT, THRISSUR
MC.168/1991, SUB DIVISIONAL MAGISTRATE,
THRISSUR

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REVN. PETITIONER - RESPONDENT NO.1 - IST PETITIONER:

P. NARAYANAN NAIR, PUDUVATTI HOUSE,
PERINJANAM, THRISSUR.

BY ADV. SRI.P.N.KRISHNANKUTTY ACHAN(SR.)
SRI.T.SETHUMADHAVAN

RESPONDENTS - REVISION PETITIONER - LRS OF 2ND RES. & STATE:

1. PRESIDENT, PALLIYIL BHAGAVATHY TEMPLE COMMITTEE, PERINJANAM, THRISSUR.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, THRISSUR.

3. SUDHA BALAGOPALAN, POTHUVATH HOUSE, PERINJANAM.

4. UMA DEVI, D/O. BALAKRISHNA MENON, URAKAM.

5. AMBIKA, D/O. DO. DO.

6. RAMADEVI, D/O. DO. DO.

7. SUMA DEVI, D/O. DO. DO.

8. RAGHU NANDANAN, S/O. DO. DO. (DELETED)

8TH RESPONDENT REGHU NANDADAN, S/O. BALAKRISHNA MENON, URAKAM IS DELETED FROM THE PARTY ARRAY AS PER THE ORDER DATED 26.2.1999 IN CRL. M.P. NO.741/99

BY ADV. SRI.DEVAN RAMACHANDRAN
PUBLIC PROSECUTOR SHRI K.G. BHASKARAN, R2
SRI.M.K.DILEEPAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 28.9.2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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CRL. R.P. NO. 527 of 1998

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Dated this the 28th day of September, 2006

O R D E R

The first petitioner in M.C. No. 168 of 1991 on the file of the Sub Divisional Magistrate, Thrissur is the Revision Petitioner. This Crl. R.P. is filed challenging the order passed of the by the learned Sessions Judge allowing a Crl. R.P. filed by the President of the Temple Committee. The Sessions Judge set aside the order passed by the Sub Divisional Magistrate.

2. The short facts necessary for the disposal of the revision are as follows: Petitioner along with one Shri P. Balakrishna Menon filed a complaint before the Sub Divisional Magistrate complaining that the Temple Committee of the Palliyil Bhagavathy Temple obstructed the petitioners and others from walking through a public pathway which passes through the temple compound. It was alleged that a stage was constructed covering a public road and the entire road was blocked. The Sub Divisional Magistrate after calling report from the police officer passed a conditional order on 13.8.1991. Subsequently, as per

order dated 17.6.1992 the conditional order was made absolute. The President of the Temple Committee was directed to remove the alleged obstruction caused to the party. That decision was challenged by the President of the Temple Committee before the Sessions Court, Thrissur in Crl. R.P. No.105 of 1992. The learned Sessions Judge set aside the order passed by the Sub Divisional Magistrate and remanded the case for fresh disposal. Thereafter, the newly elected President of the Temple Committee was impleaded as the second respondent. He gave evidence to the effect that the stage was constructed as early as in 1980. The Secretary of the Temple Committee was also examined. He also denied the allegation that the Temple Committee made any obstruction in the pathway. The second petitioner gave evidence as P.W.1. He deposed that there was a pathway through the temple compound that was being used as a public way by the people of the locality from the year 1957 onwards. He deposed that the Temple Committee had constructed a stage encroaching the pathway and the width of the pathway was reduced. The Sub Divisional Magistrate again made conditional orders absolute. Challenging that order, the President of the Temple Committee filed Crl. R.P. No.41 of 1996 before

the Sessions Court, Thrissur. The Learned Sessions Judge took note of the fact it was a case in which the counter petitioners denied the existence of a pathway. It was held that in view of the denial, the Sub Divisional Magistrate ought to have conducted an enquiry under Section 138 of the Code Criminal Procedure.

3. It was also brought to the notice of the learned Sessions Judge that there were two suits filed in respect of the said pathway as O.S. Nos.472 and 592 of 1992. It was submitted that O.S. No.472 of 1992 was decreed and O.S. No.592 of 1992 filed claiming right over the pathway was dismissed. It was also brought to the notice of the Sessions Judge that the civil court declared that the property in question is the property belonging to the Temple and there is no public pathway as contended. The suit O.S. No.592 of 1992 filed by the petitioners for a declaration and mandatory injunction was dismissed. Those judgments were marked as Exhibits C1 and C2 in the order under challenge. In view of the fact that the matter was decided by a competent civil court, the Sessions Judge set aside the order passed by the Sub Divisional Magistrate and droppped the proceedings. Challenging that order, this Crl. R.P. is filed.

4. The fact that the revision petitioners have filed O.S. No.592 of 1992 before the civil court claiming right over the pathway is not in dispute. The fact that the said suit was dismissed is also not in dispute. The suit, O.S. No.472 of 1992, was filed by the Temple Committee. The suit was decreed holding that the property belongs to the Temple and there is no public pathway as claimed by the petitioners. So the findings of the learned Sessions Judge that there is no scope for continuing the proceedings under Section 133 Cr.P.C. is only to be confirmed. There is no merit in this Crl. R.P. and the same is only to be dismissed.

In the result, the Crl. R.P. is dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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CRL. R.P. NO.527 of 1998

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O R D E R

28TH SEPTEMBER, 2006